

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

SHARROD MOTEN, ) No. CV 13-9021-VAP (PLA)  
Petitioner, ) **JUDGMENT**  
v. )  
FRED FOULK, Warden, )  
Respondent. )

Judgment has been entered in this matter dismissing the Petition for Writ of Habeas Corpus with prejudice.

An appeal may not be taken from the denial by a district judge of a habeas petition in which the detention complained of arises out of process issued by a state court “unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” Fed. R. App. P. 22(b). “A certificate of appealability may issue . . . only if . . . [there is] a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Here, the Court has concluded that the Petition is time-barred. Thus, the Court's determination of whether a certificate of appealability ("COA") should issue is governed by the Supreme Court's decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000), where the Supreme Court held that "[w]hen the district court denies a habeas petition on

1 procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should  
2 issue when . . . jurists of reason would find it debatable whether the petition states a valid claim  
3 of the denial of a constitutional right and that jurists of reason would find it debatable whether the  
4 district court was correct in its procedural ruling." Slack, 529 U.S. at 484. As the Supreme Court  
5 further explained:

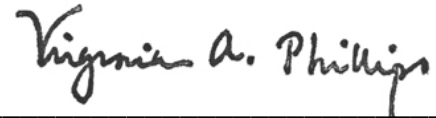
6 Section 2253 mandates that both showings be made before the court of appeals  
7 may entertain the appeal. Each component of the § 2253(c) showing is part  
8 of a threshold inquiry, and a court may find that it can dispose of the application in  
9 a fair and prompt manner if it proceeds first to resolve the issue whose answer is  
10 more apparent from the record and arguments.

11  
12 Id. at 485.

13  
14 The Court finds that the requisite showing has not been made that "jurists of reason would  
15 find it debatable whether the district court was correct in its procedural ruling" that the Petition is  
16 time-barred.

17 THEREFORE, pursuant to 28 U.S.C. § 2253, a certificate of appealability is **DENIED**.

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19 DATED: June 4, 2015



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HONORABLE VIRGINIA A. PHILLIPS  
UNITED STATES DISTRICT JUDGE